

MEMORANDUM

Staff Summary No. 6

Date: April 10, 2019

To: Members of the California School Finance Authority

From: Katrina M. Johantgen, Executive Director

Re: Resolution 19-11 Approving Amendments to Regulations for the Charter School Facility Grant Program and Authorizing the Permanent Rulemaking Process

Background: In 2013-14, the administration of the Charter School Facility Grant Program (Program) was transferred from the California Department of Education (CDE) to the California School Finance Authority (Authority). Since 2013-14, the Authority has submitted four permanent regulation packets, the last packet was approved by the Office of Administrative Law (OAL) on October 18, 2018. The Authority is seeking a fifth regulation packet to be approved by the Board on April 10, 2019. The proposed regulations provide further clarification to Education Code 47614.5 amended by Statute 2018, Chapter 32, Section 42(AB 1808) effective June 27, 2018.

Authority staff will file a Notice of Publication as required under the Regular Rulemaking Action to adopt the proposed changes into amended permanent regulations. The Authority intends to proceed with the Regular Rulemaking Action and Certificate of Compliance upon the Authority Board's approval of the following proposed amended permanent regulations:

Section 10170.2. Definitions

In subsection (r) - The amendments to the definition of Independent Appraisal include adding "in the Fiscal Year". The Authority requires all appraisals be completed in the requested fiscal year, since the appraisal will be valid for three years as proposed in Section 10170.4(a)(B)(i)(a). Additionally, the Authority is requesting non substantial language to clarify the existing text.

Section 10170.3. Eligible Applicant.

10170.3 (f)(1)

In division (B) – The amendment "The Authority reserves the right to request an additional good standing confirmation during the fiscal year" was added and "In February, prior to the disbursement of the second apportionment as described in Section 10170.9(c); and" "(C) In June, prior to the disbursement of the Final apportionment as described in Section 10170.9(d)." was removed. The Authority will require one good standing verification during the time of application submission. Subdivision (B) allows the Authority to request a good standing at any time during the fiscal year. Since 2016, the Authority has requested a good standing confirmation three times a year. Stakeholders and charter school authorizers have expressed concern regarding the requirement to provide a good standing confirmation three times a year, stating it is overly cumbersome and an ineffective use of resources.

In subsection (g) - The amendment "The Charter School shall not operate as, or be operated by, a for-profit corporation, a for-profit educational management organization, or a for-profit

charter organization” was added to conform to current State law: Assembly Bill (AB) 406 Chapter 291, Statutes of 2018.

Section 10170.4 Eligible Cost.

Section 10170.4 (a)(1)(A)

In subdivision (i) - The amendment removes “The Authority shall base the annual COLA Index adjustment on the end of the prior year’s monthly rent.” The language is duplicative of subsection (B)(i)(b) and is no longer necessary to the operations of the Program.

Section 10170.4 (a)(1)(B)

In subdivision (i) - The amendment, “The Authority will use the Independent Appraisal on file if the following conditions are met:” was added after the Authority consulted with stakeholders to establish parameters on evaluating annually renewing leases. The annually renewing lease must meet the criteria below to apply the appraisal to future funding rounds. This was necessary since 50% of annually renewing leases are at or below the COLA cap.

In paragraph (a) – The amendment, “An Independent Appraisal completed within the last three fiscal years is on file with the Authority; and” was added to minimize appraisal costs incurred by the school. Appraisals range from \$3,000-\$5,000, and are not a reimbursable expense under this program.

In paragraph (b) – The amendment added, “Rent or lease costs do not exceed prior year’s reimbursable costs, subject to an adjustment of the annual COLA Index (COLA Cap).” The grantee would be exempt from obtaining a new Independent Appraisal. However the grantee would be COLA capped for the second and third year of the lease agreement. These amendments are necessary as it provides clarity and consistency with the use of the term Independent Appraisal.

In subdivision (ii) – The amendment repositions existing text (i) into the (ii) position. The Authority is requesting this non-substantive formatting correction to existing text.

In subdivision (iii) – The amendment added, “Options to renew contained in existing rent or lease agreements on file with the Authority executed by the charter school and the lessor will not be considered New Facility Agreements.” Facility Agreements with an option to renew shall not be categorized as a New Facility Agreement. This amendment is necessary as it provides a cost saving for the grantee since the grantee’s reimbursable rent will be based on the COLA cap applied to the fiscal year.

In division (C) – The amendment “Rent or lease costs are reimbursable from time of occupancy based on Certificate of Occupancy obtained during the Fiscal Year” was added to identify when a grantee is eligible to receive reimbursement of costs incurred during the lease agreement term. Grantees often have lease agreements which incur costs prior to the pupils/students occupying the site. The Program relies on the Average Daily Attendance (ADA) obtained from CDE to determine the award amount. This is necessary to maintain the financial stability of the Program.

Section 10170.5. Application Submission

In section (a) The amendment removed the language “Applications received after the final filing date will not be accepted for review.” This language is duplicative of the subsection(3) which was added to clarify how the Authority will process late Application submissions.

In subsection (1) The amendment words “Initial” Application “period” were added to section (b) and repositioned as subsection(1).

In subsection (2) The following amendment as added and replaced section (c). “The Second Application period for each grant year shall be made available by the Authority on September 10 of the Fiscal Year. The Application deadline shall be 5:00 p.m. on October 15 of the Fiscal year. The Authority shall make application materials available on the Authority’s website and notify the public of the application release date. Under the following circumstances, an Application may be submitted during the second Application period:

- (A) A Charter School relocates from a facility that was ineligible for a grant award to a facility that is eligible and the Application includes a description of the change in facility circumstances; or
- (B) A First Year Charter School.”

These amendments are necessary to clarify when the Second Application period opens and closes. Additionally, the language conforms to the Initial Application period described in subsection (1).

In subsection (3) The amendment language “Late Applications and late Facility Invoice Expenditure Report are ineligible for Program funds and are not eligible for the appeal process described in section 10170.10.” was added to support the Authority position of not accepting late applications.

Amendments to subsections (1)-(3) are necessary to provide clear application submission process and to eliminate the practice of accepting late applications. Acceptance of late applications has tied up critical staff resources, delayed the award process, and impacted the operating budget of timely grantees.

In section (d) and (e) – The amendment repositions the existing text (d) and (e) into the (b) and (c) position. The Authority is requesting this non-substantive formatting correction to the existing text.

In section (f) – The amendment removed the language “The Authority may waive procedural defects in the submission of an Application, such as an Application filed past the deadline.” The Program provides Applicants the opportunity to appeal eligibility determinations as outlined in Section 10170.10. This amendment is necessary as the Program is oversubscribed and late applicants have used this as a loophole to appeal ineligibility determinations. This has tied up critical staff resources, delayed the award process, and impacted the operating budget of timely grantees.

Section 10170.6. Content of Application

In section (h) - The amendment added the language “All requested documentation required in order to complete the applicant’s eligibility review or award calculation shall be due to the Authority within 60 calendar days of notification. Failure to submit this documentation by the

stated deadline will result in ineligibility of the Program or applicable facility costs described in section 10170.4 (a)(1) - (a)(4).” The Authority was unable to meet the statutory deadlines, due to late submissions of requested documents needed to complete applicants’ eligibility review or award calculation. The Authority has received multiple inquiries from stakeholders regarding the disbursement of their final 2017-18 award which has been delayed by other grantee’s late submissions. This amendment is necessary to ensure eligible grantees will receive their disbursements within the statutory deadlines.

Section 10170.7. Estimated Annual Entitlement Calculation.

In section (e) – The amendment replaces the existing text (c) to (a)(2). The Authority is requesting this non-substantive formatting correction to the existing text.

Section 10170.9. Apportionment of Grant Funds.

In section (b) – The amendment replaces the existing text (b) to (a)(2). The Authority is requesting this non-substantive formatting correction to the existing text.

Recommendation: Authority staff recommends the Board adopt Resolution 19-11 approving the amended permanent regulations for the administration of the Charter School Facility Grant Program. If approved, the Executive Director will include the Resolution demonstrating the Board approval with the permanent rulemaking file.